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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 999 of 1989

Hon'ble MR.JUSTICE Y.B.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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ASHOKKUMAR HARIVALLABHBHAI PATEL

Versus

PRINCIPAL

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Appearance:

MR HARDIK C RAWAL for Appellants

MS SIDDHI TALATI, AGP for Respondent No. 1

NOTICE SERVED BY DS for Respondent No. 2,4, 6-7, 13-14 and 17.

SERVED BY RPAD for Respondent No. 3, 5, 8, 9, 10, 12, 15 & 16

MR JV JAPEE for Respondent No. 11

NOTIC UNSERVED for Respondent No. 18

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CORAM : MR.JUSTICE Y.B.BHATT

Date of decision: 26/09/2000

ORAL JUDGEMENT

1. This is an appeal under section 96 of CPC, challenging the judgement and decree of the trial court

passed in Regular Civil Suit No.418/86 wherein the plaintiff's suit was dismissed. This is an appeal only by some of the original 19 plaintiffs.

2. The said suit as originally filed by 19 plaintiffs, who in substance contended that they were students who were enrolled for the Compounder's Course conducted by the first defendant under the direction, supervision and administrative control of the third defendant, that they had undergone the necessary interview and were given admission to the said course, and that while they were attending the said course the admissions of the plaintiffs were cancelled. It was alleged and contended that the cancellation of their admissions was illegal, without any legal basis and/or authority of law, that such cancellation was malafide, etc. The plaintiffs, therefore, prayed for a declaration that the order of cancellation of the admissions to the Compounder's Course was illegal and bad in law and by way of consequential relief prayed for an injunction directing the defendants to permit the plaintiffs to continue and complete the course, appear for the necessary examination at the end of the course and also to obtain the result of such examination.

3. By way of an interim application at Exh.5 the plaintiffs had prayed for a temporary injunction pending the suit, which was granted and consequently the plaintiffs were permitted to continue with the course, to appear for the examination at the end of the course and also to obtain the result of the examination.

4. During the pendency of the suit it appeared that all the plaintiffs except one were declared successful in the examination. Plaintiff nos.4, 6, 9, 10, 11, 12, 16, 18 and 19 gave a joint pursis at Exh.104 dated 23rd February 1989, and declared that they do not wish to proceed further with the suit since their admission, examination and the results of the examination have been accepted as valid and binding by the defendants. This was supported by defendants' pursis at Exh.103. Thus, 9 of the plaintiffs withdrew from the aforesaid suit. The matter then proceeded to trial and after the evidence was recorded, the result was the impugned judgement and decree of the dismissal of the suit.

5. Even a casual perusal of the impugned judgement indicates that the trial court has taken a very casual view of the entire matter and has apparently dismissed the suit of the surviving plaintiffs by a casual observation that the plaintiffs have failed to prove that

the order of cancellation was bad and illegal.

5.1 The plaintiffs have narrated in detail, and have supported these averments by oral evidence, as to how the order of cancellation of admission is illegal, without any authority of law and as to how it suffers from malafides, discrimination, etc. The trial court ought to have appreciated that such assertions on oath would at least on a prima facie basis establish the averments made in the plaint unless contradicted or controverted by evidence to the contrary which could have been led by the defendants. Nothing is pointed out on record to show or to satisfy by appropriate evidence on record as to how such cancellations were legal and valid or how there was appropriate justification for such cancellations. In fact the only justification attempted is found in the deposition of defendant no.1 at Exh.113 to the effect that the "admissions of the plaintiffs were cancelled on account of the directions received from the higher authority from Gandhinagar". This does not in any manner explain or put forth any legal justification, or factual justification for cancellation.

6. Even the trial court was constrained to observe that "Of course all the facts are not brought before the court in this respect. No reasons are assigned for cancellation of admission." Inspite of this the trial court has taken a very casual view of the matter in holding that the plaintiffs have failed to prove their case. Going one step further, the trial court also observed that the bonafides of the defendants (in effecting the cancellation of the admissions) are established because the authorities have readmitted 9 of the 19 plaintiffs, and have under orders of the court permitted them to appear in the examination and have declared the results.

7. The trial court, therefore observed, on this frail basis that since the plaintiffs were not entitled to the declaration sought, they would not also be entitled to the consequential injunction as prayed for.

8. To my mind, this oversimplistic approach without reference to the proper appreciation of the pleadings of the plaintiffs and without appreciation of the absence of any evidence in rebuttal led by the defendants renders the impugned judgement and decree liable to be quashed and set aside.

9. However, looking to the facts and circumstances which are on record, and including a reference to that

fact situation which came into existence during the pendency of the suit, it also becomes obvious that the plaintiffs have under interim orders of the court, continued with the course, had appeared for the examination and had obtained the result of the examination, which was precisely the prayer made by way of a consequential relief in the suit. Thus, in the peculiar circumstances of the case whether the main relief of declaration sought by the plaintiff is granted or not makes absolutely no difference to the outcome of the suit. However, as discussed hereinabove, I am of the opinion that the trial court has completely failed to grasp the issues which arise from the pleadings of the parties and the consequential evidence on record and consequently the judgement and decree of the trial court requires to be quashed and set aside. As a consequence, the suit of the plaintiffs requires to be decreed. Order accordingly.

10. This appeal is accordingly disposed of with no order as to costs.

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